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Nos. 86-509 and 86-564

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Supreme Court of the United States

OCTOBER TERM, 1986

OTIS R. BOWEN, Secretary of Health and Human Services,

Appellant,

v.

BEATY MAE GILLIARD, *et al.*,

Appellees.

PHILLIP J. KIRK, Secretary, North Carolina Department of Human Resources, *et al.*,

Appellants,

v.

BEATY MAE GILLIARD, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA

BRIEF *AMICUS CURIAE* OF JUVENILE AND FAMILY COURT JUDGES

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Appellees.

On Appeal From The United States District Court For The Western District Of North Carolina

BRIEF AMICUS CURIAE OF JUVENILE AND FAMILY COURT JUDGES

Interest of the Amicus Curiae[1]

The National Council of Juvenile and Family Court Judges is an organization of judges which exists to enhance the quality of judging in the nation's juvenile and family courts. The Council was founded in 1937, and is the oldest and largest judicial membership organization in the country. The Council membership is comprised of judges, referees, commissioners, and masters, all of whom are involved in juvenile or family law. Others active in juvenile or family law may participate in the organization as associate members. NCJFCJ conducts numerous judicial training programs in family law at the national, regional and state levels on a wide range of topics. Programs vary from brief presentations to

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1 Copies of letters of consent to the filing of this brief have been filed with the Clerk.

a full two week course at the National College of Juvenile Justice in Reno, Nevada. The Council also engages in juvenile justice research through the National Center for Juvenile Justice, its research division. NCJFCJ has a number of publications, including the Juvenile and Family Law Digest and the Juvenile and Family Court Journal.

NCJFCJ has an interest in this case because the support a child receives directly affects the quality of the child's life. As judges, we are also deeply concerned that the statute under review has the unintended effect of severely disrupting the process of establishing and enforcing child support obligations for low income families. We wish to explain the basic inconsistency between the principles that govern state child support orders and the AFDC pro-

vision before the Court in this case. We submit this brief in support of the plaintiff class because we believe that implementation of the federal requirement in our states, as construed by the Secretary of Health and Human Services, has resulted and will result in an unprecedented and unwarranted interference with the ability of states and state court judges to establish support orders based on the needs and best interests of the child.

SUMMARY OF ARGUMENT

While there are numerous variations from state to state, two consistent principles govern child support orders throughout the country. First, when a judge sets a child support order, he or she does so based on the needs of that child and the economic abilities of the parent. Second, the parent receiving the child support is obligated to use it for that child.

42 U.S.C. §602(a)(38), as construed by the Secretary of Health and Human Services, is inconsistent with both of these principles of state child support law. Under this provision, when family members wish to apply for AFDC, the child support rights of all family members must be assigned to the state. The support funds of a child are treated as income to all members of the AFDC filing unit,

typically the parent and half-siblings of the child. All but the first $50 of support is retained by the state to reimburse AFDC paid to all members of the AFDC assistance unit. This creates two problems for the judiciary: first, we base child support orders on the needs of the child and not on the needs of other family members; second, the parent receiving a child's support receives those funds as a fiduciary, and may not permissibly treat them as if they were undifferentiated family income.

It is unreasonable for state welfare departments to advise parents to use child support funds for the whole family while state court judges and law prohibit such use. Judges base their orders on the needs and best interests of the child; the federal budgeting rules for the AFDC Program should not operate at cross-pur-

poses with this fundamental goal.

Domestic relations law has been reserved to the states under our constitutional structure. The federal government may not preempt state family law functions unless it does so by direct enactment, and where such preemption is necessary to prevent major damage to clear and substantial federal interests. Hisquierdo v. Hisquierdo, 439 U.S. 572 (1979); United States v. Yazell, 382 U.S. 341 (1966). Here, there was no direct enactment; 42 U.S.C. §602(a)(38) is cryptic and indirect at best. Further, there are no clear and substantial federal interests which necessitate this major intrusion into the operation of state law and family courts.

ARGUMENT

I. CHILD SUPPORT ORDERS ARE BASED ON THE NEEDS OF THE CHILD AND MUST BE SPENT ON THE NEEDS OF THE CHILD

There are no uniform national standards for setting child support orders, but there are basic similarities throughout the states. A review of state child support standards prepared by the National Institute for Socioeconomic Research for the Department of Health and Human Services observed:

> Domestic relations law is among those areas reserved to the states by the Tenth Amendment of the U.S. Constitution and, as a result, the law of child support consists of separate statutory and common law standards for each state, no two of which are identical. Despite the potential for Balkanization of state support laws and the actual disparity in application of state laws, there is considerable consistency in the principles which are applied in the process of awarding child support.

U.S. Dept. of Health and Human Services, Office of Child Support Enforcement,

Review of Literature and Statutory Provisions Relating to the Establishment and Updating of Child Support Awards, at 12.

The specific formula, if any, used in setting child support orders varies from state to state, and sometimes from judge to judge. However, there are two important constants. First, we are unaware of any jurisdiction where the non-custodial parent's support obligation is increased based on an expectation that he should meet the expenses of other children of the custodial parent. Second, we are unaware of any jurisdiction in which it would be legal for a custodial parent with children from different biological parents to spend one child's support on the needs of the child's half-siblings.

When setting a child support order, the basic factors considered by courts

are the needs of the child, and the respective abilities of the parents. "The chief factors, of course, are the needs of the child and the parents' ability to pay." Douglas, Factors in Determining Child Support, 36 Juvenile and Family Court Journal 27 (1985).

States vary in how they determine the needs of the child. A number of states rely on the criteria set forth in the Uniform Marriage and Divorce Act, and accordingly consider the financial resources of the child; the standard of living the child would have enjoyed had the marriage not been dissolved; and the physical and emotional condition of the child and his educational needs. 9A U.L.A. §309; Review of Literature, supra, at 13-14. In other states, a dollar figure is determined for the minimum needs of the children a non-cus-

todial parent is obligated to support, and a formula is applied to determine whether the non-custodial parent can meet or surpass that minimum level. Williams, Development of Guidelines for Establishing and Updating Child Support Orders (Interim Report), Office of Child Support Enforcement, U.S. Dept. of Health and Human Services (1985), at 53-55. Wisconsin offers a third example, in which the state does not examine the child's individual needs, but instead bases child support orders on the gross income of the obligor and the number of children to be supported by the obligor. Williams, supra, at 59. In none of these approaches are the needs of the child to be supported elevated based on the presence of half-siblings or other persons living with the child.

States also vary in how they deter-

mine the respective abilities of the parents. They may base their determinations on gross or net income, may or may not give consideration to earnings capacity, may or may not allow for other deductions (e.g., day care expenses, medical costs), and may or may not require that the support obligation to existing children take priority over the need to support subsequent children. Id., at 38-52.

Sometimes, a custodial parent has children from more than one non-custodial parent. This may occur when the custodial parent has remarried, or has had one or more children out of wedlock. For example, consider a mother with two children from different marriages. In a dissolution, what measure should be used to set the father's child support? In this situation, we are aware of no juris-

diction that treats the father as if he must support both children. Some jurisdictions, when determining the relative abilities of the parties, consider the fact that the mother has two children to support, and so her resources to support the child of the marriage are diminished. This may indirectly result in a somewhat higher support order for the father than would be the case if the mother's other child were not present. However, recognizing the impact of other children on the custodial parent's resources is very different from basing a support order on an expectation that the non-custodial parent should contribute to the needs of those children.

The considerations in setting the amount of the child support order are integrally related to the court's expectation for how the funds will be

spent. A court expects that a support order for a child will be spent on the needs of that child. That is the fundamental premise in setting the order. We do not realistically expect parents to apply accounting principles to their daily household expenses. However, we do expect that the support funds will go for current and future needs of the child in whose name the order is made. Courts have typically described the duties of the custodial parent as being in the nature of the duties of a trustee receiving funds for the benefit of the child beneficiary. See, e.g., Goodyear v. Goodyear, 275 N.C. 374, 379, 126 S.E.2d 113, 117 (1962); Ditmar v. Ditmar, 48 Wash. 2d 373, 374, 293 P.2d 759, 760 (1956); Corbridge v. Corbridge, 23 Ind. 201, 206, 102 N.E.2d 764, 767 (1952); Thomas v. Holt, 209 Ga. 133, 134, 70

S.E.2d 898, 897 (1952).

The federal government's brief in this case acknowledges the principle that child support payments are for the benefit of the child, but offers an unduly expansive view of which expenditures can be considered for the benefit of the child. The federal government suggests that because a parent exercises discretion in determining how to use child support funds, the parent is free to use them for "shared expenses" of the family. Fed. App. Br. at 32-33.

Certainly it is permissible and appropriate for a parent to use a child's support funds for his or her share of family expenses. It is not permissible for a parent to use one child's support to pay everyone else's share. If a family resides in a four bedroom house, the parent cannot justify paying the

entire mortgage payment from a child's support merely because housing is a "shared expense." Rather, a parent must exercise a fiduciary's judgment in use of the funds,' and not treat the child's funds as his or her own.

The federal government also suggests that such items as transportation and clothing are ordinarily regarded as shared expenses. Fed. App. Br. at 33. This is also inaccurate. It is difficult to see how a court could construe a parent's expenditure of one child's support to purchase a bus pass or clothing for the half-sibling of the child as a legitimate use of the funds for a "shared expense."

It may be somewhat imprecise to describe a child's right in terms of either "exclusive use" or "unrestricted access," but the District Court in this

case has accurately described the basic limitations governing a parent's use of a child's support. The proper approach is to recognize that the child support funds belong to the child rather than the parent, and that while a parent will exercise discretion in determining how they are spent, that discretion must be exercised by applying the standards generally applicable to fiduciaries.

II. 42 U.S.C. §602(A)(38), AS CONSTRUED BY THE SECRETARY OF HEALTH AND HUMAN SERVICES, SUBSTANTIALLY INTERFERES WITH THE OPERATION OF STATE CHILD SUPPORT LAW.

As construed by the Secretary of Health and Human Services, 42 U.S.C. §602(a)(38) requires that when an application for Aid to Families with Dependent Children assistance is made for a child, the application must include all of the child's siblings living in the home. If one child receives child sup-

port, those funds are assigned to the state as a condition of the family receiving aid. The first $50 of child support paid each month is passed on to the custodial parent for the child, but all child support paid in excess of $50 is retained by the state to reimburse aid paid for the AFDC filing unit. The funds are not only used to reimburse the child's pro rata share of the AFDC grant, but they are also used to reimburse the AFDC payment made to everyone in the AFDC filing unit. So long as the child support amount paid is not large enough to make the filing unit ineligible for AFDC, all of the child support paid in excess of $50 goes to reimburse the state rather than meet the needs of the child.

An example will help illustrate our concern about the inconsistency between this provision and state child support

law. Suppose the AFDC grant for a three person assistance unit is $400/month, and the AFDC grant for a four person unit is $500/month. Suppose Mr and Mrs. Smith are getting divorced, they have one child, and Mrs. Smith has two children from a prior marriage. As often is the case at the time of divorce, suppose Mrs. Smith has no source of income. How should a court determine Mr. Smith's child support obligation?

Before enactment of the Secretary's regulations purporting to implement 42 U.S.C. §602(a)(38), the court could approach the case like any other child support case: the judge would consider Mr. Smith's income and capacity for income; Mrs. Smith,s income and capacity for income; and the needs of the Smith child. If the court ordered child support of $250/month, the court would

expect those funds to be spent for the Smith child. If Mr. Smith had more income, or the Smith child had special needs, and an order of $300/month were made, the court would expect the additional amount to still go to the needs of the Smith child. The court would consider the funds misspent if, for example, Ms. Smith used them to pay for clothing or schooling needs of her other children.

The application of the Secretary's regulations purporting to implement 42 U.S.C. §602(a)(38) substantially alters the effect of the support order. Now, if the court orders child support of $250/ month, Ms. Smith will receive $250/ for the Smith child, and the remainder of the funds will be used to reimburse the state for AFDC paid for the Smith child and other family members in the AFDC unit.

The Smith child's pro rata share of the AFDC grant is $125 (1/4 of $500), so the child support paid in excess of that amount is retained by the state to reimburse the AFDC payment for other family members.

If the court orders child support of $300/month, Ms. Smith will still receive $50 for the Smith child, and the remainder of the support will still be used to reimburse the state for AFDC paid to the filing unit. The increased amount of the court order does not result in more support for the Smith child; it only increases the amount of Mr. Smith's support which goes toward reimbursing the state for AFDC paid for the other family members. Whichever amount Mr. Smith pays, the AFDC unit will still receive the same AFDC payment of $500. Whether or not Mr. Smith pays any support, his child will

still receive a pro rata share of the AFDC grant. However, the only way for the Smith child to get more than $50 benefit from his father's support is for the court to order a child support payment large enough to make the entire family ineligible for AFDC.

In this situation, an increase in child support will often provide no benefit whatsoever to the child. Whether the father pays $250 or $300, the child will have the same income: the child will receive a pro rata share of the AFDC grant, and $50 of the child support will be passed through to Mrs. Smith for the Smith child. Thus, when the court sets child support, in effect it is simply deciding how much Mr. Smith must reimburse the state for AFDC paid to his child and to everyone living with his child who is in the AFDC unit.

Suppose Mr. Smith would be willing or able to pay a greater child support sum, because his child has special educational or medical needs. Under 42 U.S.C. §602(a)(38), as construed by the Secretary, an increased child support order cannot be directed to the child's special needs, because the increased order only results in reimbursing the state for AFDC paid to other family members. For all practical purposes, the provision forecloses a court from directing or permitting a non-custodial parent to pay additional support for additional needs of the child.

The resulting structure is manifestly unfair to both the child and the non-custodial parent. Its destructive efforts go beyond the reduction in direct support to affected children. In addition to its economic function, child

support provides a critical bond between a child and non-custodial parent after divorce. No enforcement tool is as effective as a parent's desire to support his child. When a parent wants to pay support for his child, but discovers that the funds paid will primarily be used to reimburse the state for children other than his own, the parent's incentive to pay is substantially diminished. State enforcement techniques may minimize the actual loss of funds where parental incentive is lost, but those techniques cannot repair the damage to the parent-child relationship.

Even if the court would wish to make a non-custodial parent support the entire family in which his child lives, the court is not free to do so. Largely under the impetus of the Child Support Enforcement Amendments of 1984, p.L. 98-

378, states have been moving toward the use of guidelines which specifically prescribe the factors that may be considered when a court sets a child support order. 42 U.S.C. §667. We are not aware of any state guidelines under which a court is free to set a higher level of support than would otherwise be justified merely because a child is a voluntary or involuntary member of an AFDC assistance unit.

The interaction of state child support guidelines and 42 U.S.C. §602(a)(38), as construed by the Secretary, creates an utterly untenable situation for the judiciary. Under the provision, the AFDC eligibility status of the other members of the child's family and the total AFDC payment amount for all family members become the critical factors in determining whether or not

child support funds will be actually received by the child. Under state child support standards, we can give no consideration to these factors when setting child support orders.

The difficulty is exacerbated because of the limitations on permissible use of a child's support funds. Suppose in the Smith's example that Mr. Smith has sufficient income to justify a $600/month child support order. If the court makes a $600/month child support order, it will make the assistance unit ineligible for AFDC. But the unit has no other income. If Mrs. Smith treats the $600/month designated for the Smith child as ordinary income for herself and her other child, she has breached the terms and expectations of state law and the child support order. It is inconsistent with her fiduciary duties for her to spend

those funds on the needs of persons other than the Smith child. Yet if she does not do so, she and her other child will have no income at all.

It is untenable to have a situation where the state court judge explains to Mrs. Smith that she must use the support for the Smith child for that child alone, while the state welfare department tells her she is free to use the funds for any family member. Yet the operation of 42 U.S.C. §602(a)(38), as construed by the Secretary, effectively compels state welfare agencies to provide such advice, in direct contravention of state judicial orders.

The state's brief to this Court does not recognize the inconsistency between 42 U.S.C. §602(a)(38), as construed by the Secretary, and the law of child support, because it contends that a

parent as trustee could decide that it was in the best interest of her child to apply for AFDC for the entire family. State. App. Br. at 13. It explains three reasons that a parent might make that decision: that a steady source of AFDC would be preferable to erratic or unpaid child support; that AFDC receipt would provide automatic eligibility for Medicaid; and that the standard of living of the family in which the child lives would be enhanced. State App. Br. at 13.

The difficulty with the state's argument is that it does not acknowledge that the best interests of the child are sometimes different from the best interests of the people living with the child. The first two reasons offered by the state - a steady source of income, and eligibility for Medicaid - may well be advantageous to the child. A parent

as trustee might reasonably wish to assign the child's support rights in order to receive these benefits. Under prior law, when a parent was able to choose whether to apply for AFDC for a child based on the best interest of the child, parents typically could and did base their decisions on whether the child would receive a benefit from being a part of an AFDC unit.

However, the third reason offered by the state - that AFDC application may raise the standard of living of the family - seems to disregard the fact that the increased living standard for other family members comes at the expense of a decreased living standard for the child. A parent as trustee cannot justify assigning a child's support rights to the state merely because the parent could obtain a source of income for her other

children by making the assignment.

The state's example demonstrates the problem that the provision creates for a parent of a child living with half-siblings. The state seems to suggest that the parent look at uses of the funds from a total family perspective. The child support order is not based on a total family perspective, and it is not permissible to use the child support funds as if they were income for the total family. Nevertheless, under the provision, the parent can only receive AFDC for the half-siblings by assigning to the state the child support rights of the child who does not need AFDC. This creates a direct conflict between the parent's duty as trustee of child support funds and the parent's need to find a source of income for the other children. In practice, it compels the parent to

sacrifice one child's rights for the other childrens' needs. Necessarily, it undermines the ability of parents to comply with the terms of state child support orders and law.

III. 42 U.S.C. § 602(A)(38) MUST BE CONSTRUED IN A MANNER THAT DOES NOT PREEMPT STATE CHILD SUPPORT LAW.

On prior occasions, this court has refused to construe federal law affecting state family law in a manner that pre-empts the state law provisions. In United States v. Yazell, 382 U.S. 341, 352 (1966), the Court explained: "Both theory and the precedents of this Court teach us solicitude for state interests, particularly in the field of family and family-property arrangements."

We have considerable doubt as to whether Congress could, consistent with principles of federalism and its enumerated powers, pre-empt the basic stan-

dards governing state child support law. The court need not reach that issue in this case, because the Congressional enactment under consideration here clearly does not meet the established standards for a finding that a Congressional attempt to pre-empt state law has occurred.

Hisquierdo v. Hisquierdo, 439 U.S. 572 (1979) offers a two part test for determining whether federal law should be construed to preempt state family law. The first consideration is whether Congress has "positively required by direct enactment" that state law be pre-empted. 439 U.S. at 581, quoting Wetmore v. Markoe, 196 U.S. 68, 77 (1904). The second consideration is that "[s]tate family and property law must do 'major damage' to 'clear and substantial' federal interests before the Supremacy

Clause will demand that state law be overridden." 439 U.S. at 581, quoting United States v. Yazell, 382 U.S. 341, 352 (1966).

Neither prong of the Hisquierdo test is satisfied here. First, the conflict between the federal construction and state law is not one resulting from "direct enactment" of conflicting federal legislation. In an area historically reserved for the states, and so central to the very operation of state government, the Court should not find preemption by implication absent clear legislative intent. In Hisquierdo, the Court found "direct enactment" where the anti-assignment provision of the Railroad Retirement Act, 45 U.S.C. §231m, provided:

> Notwithstanding any other law . . . of any State, . . . no annuity or supplemental annuity shall be assignable or be subject to any tax

> or to garnishment, attachment, or other legal process under any circumstances whatsoever. . ."

439 U.S. at 576. A finding of preemption was appropriate where the Congressional language was unequivocal in declaring that the provision was to govern, notwithstanding state law.

In contrast, neither the language nor the legislative history of Section 602(a)(38) reflect any Congressional awareness that the statute would conflict with state child support law, and they certainly do not manifest Congressional intent to preempt state child support law. Section 602(a)(38) makes no reference to child support, and offers no statement as to how to resolve conflicts arising from inconsistencies with state child support law. The statutory language does not, by its terms, mandate that a child receiving child support be

compelled to be in an AFDC assistance unit or assign the child support rights to the state. The legislative history, as described by both the District Court and the federal government (J.S. App. 43a-50a, Fed. App. Br. at 27-28) indicates that there were several brief references to child support in an exceedingly brief legislative history. None of these references give any reason to believe that Congress was aware of the conflict that could arise from implementation of Section 602(a)(38), or that Congress wished to resolve the conflict by preempting state child support law.

There is a further indication that the federal government has not considered the conflict between 42 U.S.C. § 602(a)(38), as construed by the Secretary, and state child support law. The materials

and publications of the Department of Health and Human Services have advocated, and continue to advocate, child-based determinations in setting child support orders. For example, HHS has promulgated regulations setting forth mandated criteria for a state to apply in setting support obligations for a non-custodial parent whose child is receiving AFDC. 45 C.F.R. §302.53. These criteria are to be applied when there is no court order for support. 45 C.F.R. §302.53(a). The criteria provide, in part, that the state must consider "the needs of the child for whom the support is sought" and "the amount of assistance which would be paid to the child" under the state's AFDC plan. 45 C.F.R. §302.53(a)(5), (6). Nothing in the criteria directs states to consider the needs of the child's family or the amount of aid being paid for the

child's family.

Similarly, the Department of Health and Human Services has published materials offering guidance to the judiciary in child support enforcement proceedings. Henry and Schwartz, A Guide for Judges in Child Support Enforcement (2nd Ed.), U.S. Department of Health and Human Services, Office of Child Support Enforcement. In the course of its comprehensive discussion of the Establishment of Support Obligations (pp. 51-78), the publication considers a range of approaches to setting child support amounts, but never suggests that an appropriate approach would be to consider the needs of a child's half-siblings or other family members. We are unaware of any publication or other communication from the Department of Health and Human Services offering any information to

state judges as to how to set child support orders in light of 42 U.S.C. §602(a)(38).

In short, we are aware of no evidence that Congress or the Department of Health and Human Services contemplated the conflict between Section 602(a)(38) and state child support law, and we are certainly aware of no evidence that Congress intended by "direct enactment" to preempt state child support law in this area.

The second part of the Hisquierdo test focuses on whether there would be "major damage" to "clear and substantial" federal interests if the federal statute were construed in a manner that did not effect a preemption of state family law. 439 U.S. at 581. The federal interest, as stated by the Secretary of Health and Human Services, appears to be that of

reducing federal expenditures and targeting assistance to the neediest families, by recognizing the reduced needs of persons who share expenses with family members who have their own source of income. See Fed. App. Br. at 9-10. This goal can be attained without preempting state child support law. It is surely possible to adopt budgeting rules that reflect economies of shared expenses, but which do not compel parents to spend the support of one child on the needs of the child's half-siblings. See Baldwin v. Ledbetter, 648 F.Supp. 623, 639 (N.D. Ga. 1986), direct appeal docketed, No. 86-1140 (Jan. 9, 1987), stay pending appeal granted, No. A-448 (Dec. 18, 1986) (Powell, C.J.). A more narrowly drawn provision can readily achieve the Congressional goal without overturning the foundations of state

child support law.

The Court should hold that Section 602(a)(38), as enacted, does not preempt the strictures of state child support law. The Court should accordingly hold that, where state child support law prohibits a parent from spending a child's support on the needs of his or her half-sibling, Section 602(a)(38) may not be construed to require inclusion of the supported child in the AFDC filing unit.

Until now, states have based child support determinations on the needs of the child rather than the needs of the persons with which the child lives. If the standard is to be changed, the legislatures of the states should be allowed to consider the merits and demerits of alternative approaches. When Congress enacted the Child Support Enforcement

Amendments of 1984, it declined to impose a single set of standards on the states for setting child support orders; instead, it directed each state to determine its own guidelines, based on the conditions and needs of the states. 42 U.S.C. §667. The federal encouragement to set guidelines, while allowing states to determine their own appropriate guidelines, is consistent with the principles of comity which govern our federal system.

In contrast, the ability of states to set and enforce their own guidelines is undermined by the imposition of a federal requirement that support orders be treated as undifferentiated family income when family members need public assistance. This is an unprecedented, unjustified and unwarranted intrusion into the decisions of the states and the

operation of state family courts.

CONCLUSION

The ability of state court judges to base child support orders on the needs and best interests of a child is at the very heart of state family law. Section 602(a)(38), as construed by the Secretary, makes it impossible for state judges to perform this role when family members need AFDC. In those cases, it alters the process of setting an order from one focused on the needs of the child to one in which the court merely orders a parent to reimburse the state for AFDC assistance paid for the child and the other persons living with the child. It effectively prevents state courts from ordering or allowing parents to provide for the education and special needs of their children whenever the children live with relatives who have

applied for AFDC assistance. It effectively prevents a parent from supporting his child unless he also supports the half-siblings of the child.

In enacting Section 602(a)(38), Congress manifested no intent to disturb or preempt state child support law. The Court shoud find that there has been no preemption, reject the Secretary's construction of the statute, and affirm the order of the District Court.

Respectfully submitted,

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